

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 139

Introduced by Johnson, 37

Read first time January 10, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to DNA testing; to amend sections 29-4104,
2 29-4105, and 29-4108, Revised Statutes Supplement, 2002;
3 to change provisions relating to the State DNA Data Base
4 and uses for DNA samples and records; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-4104, Revised Statutes Supplement,
2 2002, is amended to read:

3 29-4104. The State DNA Data Base is established. The
4 Nebraska State Patrol shall administer the State DNA Data Base and
5 shall provide DNA records to the Federal Bureau of Investigation
6 for storage and maintenance in the Combined DNA Index System. The
7 patrol shall provide for liaison with the Federal Bureau of
8 Investigation and other law enforcement agencies in regard to the
9 state's participation in the Combined DNA Index System. The State
10 DNA Data Base shall store and maintain DNA records related to:

11 (1) Forensic casework including, but not limited to,
12 forensic casework relating to missing persons, relatives of missing
13 persons, and unidentified human remains;

14 (2) Convicted offenders required to provide a DNA sample
15 under the DNA Detection of Sexual and Violent Offenders Act; ~~and~~

16 (3) Anonymous DNA records used for research or quality
17 control; and

18 (4) Missing persons, relatives of missing persons, and
19 unidentified human remains.

20 Sec. 2. Section 29-4105, Revised Statutes Supplement,
21 2002, is amended to read:

22 29-4105. (1) The Nebraska State Patrol shall prescribe
23 procedures to be used in the collection, submission,
24 identification, analysis, storage, and disposition of DNA samples
25 in the State DNA Sample Bank and DNA records under the DNA
26 Detection of Sexual and Violent Offenders Act in the State DNA Data
27 Base. These procedures shall include quality assurance guidelines
28 for laboratories which submit DNA records to the State DNA Data

1 Base and shall require that all laboratories be accredited by the
2 American Society of Crime Laboratory Directors-LAB-Laboratory
3 Accreditation Board or the National Forensic Science Technology
4 Center or by any other national accrediting body or public agency
5 which has requirements that are substantially equivalent to or more
6 comprehensive than those of the society or center. The State DNA
7 Data Base shall be compatible with the procedures specified by the
8 Federal Bureau of Investigation, including the use of comparable
9 test procedures, laboratory equipment, supplies, and computer
10 software. The DNA records shall be securely stored in the State
11 DNA Data Base and retained in a manner consistent with the
12 procedures established by the Federal Bureau of Investigation.

13 (2) The Nebraska State Patrol may contract with the
14 University of Nebraska Medical Center to establish the State DNA
15 Sample Bank at the medical center and for DNA typing tests. The
16 State DNA Sample Bank shall serve as the repository of DNA samples
17 collected under the ~~act~~ DNA Detection of Sexual and Violent
18 Offenders Act and other forensic casework. The University of
19 Nebraska Medical Center ~~in contracting under the act~~ is subject to
20 the same restrictions and requirements of the act, insofar as
21 applicable, as the Nebraska State Patrol, as well as any additional
22 restrictions imposed by the patrol.

23 (3) The DNA samples and DNA records shall only be used by
24 the Nebraska State Patrol (a) to create a separate population data
25 base comprised of DNA records obtained ~~under the act~~ after all
26 personal identification is removed and (b) for quality assurance,
27 training, and research purposes related to human DNA
28 identification. The patrol may share or disseminate the population

1 data base with other law enforcement agencies or forensic DNA
2 laboratories which assist the patrol with statistical data bases.
3 The population data base may be made available to and searched by
4 other agencies participating in the Combined DNA Index System.

5 (4) Except for records and samples expunged under section
6 29-4109, the Nebraska State Patrol shall permanently retain DNA
7 samples and records of an individual obtained under section
8 29-4106. Any other DNA samples and records related to forensic
9 casework, other than those used for research or quality control,
10 shall not be permanently retained but shall be retained only as
11 long as needed for a criminal investigation or criminal
12 prosecution.

13 (5) If the Nebraska State Patrol determines after
14 analysis that a forensic sample has been submitted by an individual
15 who has been eliminated as a suspect in a crime, the patrol or the
16 law enforcement agency which submitted the sample shall destroy the
17 DNA sample and record in the presence of a witness. After
18 destruction, the patrol or law enforcement agency shall make and
19 keep a written record of the destruction, signed by the individual
20 who witnessed the destruction. After the patrol or the law
21 enforcement agency destroys the DNA sample and record, it shall
22 notify the individual if he or she is not a minor or the parent or
23 legal guardian of a minor by certified mail that the sample and
24 record have been destroyed. Destruction of a DNA sample and record
25 under this section shall not be considered the offense of tampering
26 with physical evidence under section 28-922.

27 Sec. 3. Section 29-4108, Revised Statutes Supplement,
28 2002, is amended to read:

1 29-4108. (1) All DNA samples and DNA records submitted
2 ~~pursuant to the DNA Detection of Sexual and Violent Offenders Act~~
3 ~~to the State DNA Sample Bank or the State DNA Data Base~~ are
4 confidential except as otherwise provided in the ~~act~~ DNA Detection
5 of Sexual and Violent Offenders Act. The Nebraska State Patrol
6 shall make DNA records in the State DNA Data Base available:

7 (a) To law enforcement agencies and forensic DNA
8 laboratories which serve such agencies; and

9 (b) Upon written or electronic request and in furtherance
10 of an official investigation of a criminal offense or offender or
11 suspected offender.

12 (2) The Nebraska State Patrol shall adopt and promulgate
13 rules and regulations governing the methods of obtaining
14 information from the State DNA Data Base and the Combined DNA Index
15 System and procedures for verification of the identity and
16 authority of the requester.

17 (3) The Nebraska State Patrol may, for good cause shown,
18 revoke or suspend the right of a forensic DNA laboratory in this
19 state to have access to or submit records to the State DNA Data
20 Base.

21 (4) For purposes of this subsection, person means a law
22 enforcement agency, the Federal Bureau of Investigation, any
23 forensic DNA laboratory, or person. No records or DNA samples
24 shall be provided to any person unless such person enters into a
25 written agreement with the Nebraska State Patrol to comply with the
26 provisions of section 29-4109 relative to expungement, when
27 notified by the Nebraska State Patrol that expungement has been
28 granted. Every person shall comply with the provisions of section

1 29-4109 within ten calendar days of receipt of such notice and
2 certify in writing to the Nebraska State Patrol that such
3 compliance has been effectuated. The Nebraska State Patrol shall
4 provide notice of such certification to the person who was granted
5 expungement.

6 Sec. 4. Original sections 29-4104, 29-4105, and 29-4108,
7 Revised Statutes Supplement, 2002, are repealed.